

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYNNIE ROBERSON,

Defendant.

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HONORABLE NANCY G. EDMUNDS

No. 21-cr-20285

MOTION HEARING

Detroit, Michigan - Thursday, June 30, 2022

Appearances:

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- - -

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Motion Hearing  
Thursday, June 30, 2022

**I N D E X**

- - -

<u>Proceeding</u>	<u>Page</u>
<u>Proceeding</u>	<u>Page</u>
Motion to Exclude Expert Testimony	
Proffer by Mr. Smith	27
Response by Ms. Mannarino	28
Rebuttal by Mr. Smith	29
Response by Ms. Mannarino	30
Motion Re: 404(b) Evidence	
Comment by Ms. Mannarino	31
Response by Mr. Smith	31
<u>Government's Case in Chief</u>	<u>Page</u>
Witness	
Joseph Nether	
Direct Examination By Mr. Smith	5
Certificate of Court Reporter	33

Motion Hearing  
Thursday, June 30, 2022

1 Detroit, Michigan

2 Thursday, June 30, 2022

3 1:30 p.m.

4 - - -

5 THE CLERK: Court calls 21-20285, United States  
6 of America vs. Linnie Roberson.

7 Counsel, state your appearances for the record.

8 MR. SMITH: Good morning Your Honor. Jeremiah  
9 Smith on behalf of the United States.

10 MS. MANNARINO: And good morning. Maria  
11 Mannarino on behalf of Mr. Linnie Roberson, who is present  
12 and stands to my left.

13 THE COURT: Good morning, everyone. Be seated  
14 please.

15 You're welcome to remain seated when you address  
16 the Court. If it's easier for you to do that, it's fine.  
17 I know some people prefer to speak from the podium, and  
18 that's fine, too, just as long as you can use a mic.

19 And I think my law clerk has told you, anyone who  
20 is vaccinated is welcome to take off their mask.

21 We have two motions up this morning. Ms.  
22 Mannarino, I believe they're both your motions. Motion in  
23 limine to exclude proposed 404(b) evidence, and a motion  
24 to exclude expert testimony and for a Daubert hearing.  
25 Let's start with 404(b).

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 MS. MANNARINO: At the Court's pleasure, but we  
2 did discuss whether or not we could do the other motion  
3 first, in order to accommodate the witness.

4 THE COURT: That's fine. Go ahead.

5 MR. SMITH: I defer to you, ma'am. Your motion,  
6 as the Court indicated.

7 Your Honor, I'm prepared to call ATF Special  
8 Agent Joe Nether to elicit testimony to lay the foundation  
9 for his basis in expertise in narcotics trafficking.

10 THE COURT: That's fine.

11 MR. SMITH: Thank you. The government calls  
12 Special Agent Joe Nether.

13 THE COURT: Raise your right hand, please.

14 Do you solemnly swear that the testimony you're  
15 about to give in the matter here pending will be the  
16 truth, the whole truth, and nothing but the truth, so help  
17 you God?

18 THE WITNESS: I do.

19 COURT REPORTER: Spell your name, please.

20 THE WITNESS: Joseph, J-o-s-e-p-h; Nether,  
21 N-e-t-h-e-r.

22 MR. SMITH: May I proceed, Your Honor?

23 THE COURT: You may.

24

25

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

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**DIRECT EXAMINATION**

BY MR. SMITH:

Q Agent Nether, where are you employed?

A I'm employed as a supervisory special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Q Commonly referred to as the ATF, sir?

A Yes.

Q How long have you been with ATF?

A Since the year 2001.

Q You mention that you're currently a supervisor. What are your day-to-day responsibilities in that job?

A As a supervisor, I run a team of approximately six to seven people that work their investigations typically on the west side of Detroit. So we do anything from investigating violent street gangs, to armed drug dealers, to shooters, by doing CI buys, search warrants, things of that sort.

Q Special Agent Nether, prior to being in this supervisory position, what type of investigations were you conducting for the ATF?

A Prior to being a supervisor, my main type of investigations involved racketeering cases against violent street gangs in and around the City of Detroit, armed drug dealers, drug dealers that robbed other drug dealers, armed robbery crews. I worked murder for hire investigations, just simple drug organizations, violent felons that possessed guns.

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 Q Before we get into some of those specifics, I want to take  
2 a step back then. What if any formal education do you have,  
3 sir?

4 A I have a bachelor's degree from the University of Detroit  
5 Mercy.

6 Q You mentioned some of the investigations that you've been  
7 part of. I think it's fair to say that we all know today we're  
8 here to talk about potential narcotics trafficking, as well as  
9 the use of firearms involved in alleged narcotics trafficking.  
10 So let me ask you this, sir, what specific training have you  
11 received as an ATF agent in the areas of investigating  
12 narcotics trafficking?

13 A Well, every agent, to include myself, does receive basic  
14 narcotics and firearms training in the ATF Academy. I've also  
15 gone on to go to a firearms trafficking school. Soon after I  
16 got out of the academy, a couple years in getting out of the  
17 academy, I've also been to a basic identification of narcotics  
18 school for several days. I've also been in another narcotics  
19 identification class when I was a member of the enhanced  
20 undercover program. And then, in addition to that, obviously,  
21 real world experience which I believe is more important than  
22 what I learned in the classroom.

23 Q Before we get into that real world experience, let's talk  
24 a little more about some of the training that you just  
25 mentioned.

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1                   These narcotics, specifically, schools, when  
2                   you're going through this program, are you instructed on the  
3                   importance of things such as the weight of narcotics that you  
4                   might be dealing with?

5           A     Yes.

6           Q     Why is that important to you as an investigator?

7           A     Well, the importance when it comes to the weights are to  
8                   be able to distinguish when you're dealing with somebody who is  
9                   a user of narcotics as opposed to somebody who is a distributor  
10                  of narcotics, because if you're in a undercover capacity, which  
11                  a lot of these trainings that I've gone to and taught at, we  
12                  are trying to portray ourselves a certain way, so you have to  
13                  understand the different weights; when something is considered  
14                  personal, when something is considered distribution level, and  
15                  even how to break that distribution level down to sales on the  
16                  street.

17                         So it's something where you have to learn all  
18                         aspects of narcotics trafficking, from the user, to the person  
19                         who is actually trafficking in narcotics.

20          Q     Let me follow up on what you just mentioned there. You  
21                  indicated that even for street level trafficking you have to  
22                  understand how those weights can break down. How do you  
23                  differentiate between, say, a low level dealer versus maybe a  
24                  mid level street dealer, to someone who is much higher up in a  
25                  narcotics trafficking organization?

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 A A lot of times you can figure that out just, I mean, a  
2 weight is a big determining factor, and how much the person is  
3 actually trafficking.

4 A lot of the times, my job function was to  
5 actually meet with narcotics traffickers and have conversations  
6 with these narcotics traffickers, so I was able, based on  
7 conversations and based on what I was purchasing, able to  
8 determine where they would fit in that scheme of whether or not  
9 they're low, mid or high level, because I've purchased anything  
10 from pretending to be a user of narcotics, to being a mid level  
11 trafficker or middle man, and I've also portrayed myself as a  
12 large scale distributor dealing with kilograms of cocaine.

13 Q Again, before we get into that specific experience, I want  
14 to touch on one more piece of your training. You mentioned  
15 that you have been part of the enhanced undercover program, is  
16 that correct, sir?

17 A That's correct.

18 Q What type of training did you receive from that program  
19 that would be relevant to our discussions today?

20 A So I was in that program from 2016 to 2018. Prior to  
21 being a member of that program, I went to an advanced  
22 undercover school where all of the, I guess, top undercover  
23 agents from the country would come in to teach that school, and  
24 they would put us through different scenarios. Each  
25 scenario -- well, most of the scenarios were related to a drug



Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 dealer that had a firearm, and how to purchase narcotics from  
2 that drug dealer or from a narcotics -- or from a firearms  
3 trafficker and how to purchase those narcotics -- or that  
4 firearm from that trafficker.

5 Based on the individuals that were teaching that  
6 school, they would actually set up the scenarios based on  
7 actual events that they participated in, deals that they  
8 actually did. So every scenario that they would put us through  
9 would actually be a real scenario.

10 Once you complete that advanced undercover  
11 school, you are then given the opportunity to apply for the  
12 enhanced undercover program, which I did. And again, they put  
13 you through more scenarios, they ask you a ton of questions.  
14 They put you in a room where they have three experienced  
15 undercover agents just fire questions as you, see how you'll  
16 handle them.

17 And then typically, I mean, they're -- I think  
18 when I went through there were probably about 20 people that  
19 applied, and only three people made it through. I was one of  
20 those people.

21 When you answer the questions appropriately,  
22 that's when you're given the opportunity to be in the program.  
23 Then, once you're in the program, you are still required to go  
24 through a training once a year where you again discuss  
25 narcotics trafficking, firearms trafficking, the different

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 types of methods utilized by different drug traffickers,  
2 firearms traffickers. It's to keep you up to date on what's  
3 going on.

4 And you're meeting with individuals from around  
5 the country. At any time, there's probably 25 to 30 different  
6 agents that are in this program in different divisions around  
7 the country, so you are learning the different methods that are  
8 happening in all these different states and divisions, and  
9 that's something that, for the most part, we went through every  
10 year. There were a couple that were missed based on funding,  
11 but I've participated in several of those trainings.

12 Q Would it be fair to say that after your practical  
13 experience working as an undercover officer that you've also  
14 now instructed at some of these schools?

15 A Yes, I've been instructing for years now at the Advanced  
16 Undercover School, which is where, like I mentioned, the school  
17 prior to you getting into the undercover program. It's the  
18 school where -- it's individuals that are already doing  
19 undercover work, but we then go in and teach them and view them  
20 doing scenarios, and critique them on different things that  
21 they could do. And I, myself, have also come up with scenarios  
22 based on real events that have taken place in my work to put  
23 them through those scenarios.

24 So yes, I've been doing that training for -- I've  
25 been training definitely for over a decade.

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 Q Why, then, based on your experience as a student, as well  
2 now as an instructor, are these scenarios involving narcotics  
3 trafficking consistently also involving firearms?

4 A Because typically any narcotics trafficker that we are  
5 investigating, they typically have firearms, and if they did  
6 not have firearms, we would not be investigating them.

7 Q During the course of these trainings, did you learn  
8 certain methods that you've applied in these undercover  
9 operations?

10 A Absolutely.

11 Q Do you learn things like how to conduct an undercover buy  
12 of narcotics?

13 A Yes, you learn what to say, the different terminology, the  
14 prices that you should pay for certain weights of narcotics.  
15 You -- because you're speaking with agents that are doing  
16 things in other divisions, so we're able to bounce ideas off of  
17 each other. I'm able to explain what I've seen, they're able  
18 to explain what they've seen. So it's a way for us to stay on  
19 top of what's happening when it comes to the world of narcotics  
20 trafficking or armed narcotics trafficking.

21 And obviously, in addition to that, it's, you  
22 know, we speak with our informants, as well, to make sure we're  
23 up on what's going on in the areas that we work.

24 Q I'll ask you to expound on that briefly. When you speak  
25 with an informant, what do you learn from them that might be

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 relevant to why we're here today?

2 A So sometimes, you know, prices change, sometimes the  
3 method in which -- and how people conceal narcotics change, the  
4 different types of firearms that people sometimes would  
5 traffic, a popular gun or the type of gun that would be used  
6 for narcotics trafficking. I mean, sometimes those things  
7 would change not too much, but those will be things that we  
8 would debrief an informant on during each investigation once an  
9 informant tells us about somebody who is allegedly involved in  
10 narcotics trafficking just so we are up to date and making sure  
11 that when we're investigating it that we're not doing anything  
12 that would -- or that we would be doing things consistent with  
13 how that person is operating.

14 Q I'll ask you, then, a hypothetical. For example, would a  
15 debrief include something along the lines of how much currently  
16 a heroin user is buying a half a gram of heroin for in the  
17 greater Detroit area?

18 A So it could, because a lot of the times when we are  
19 dealing with informants and we're having the informants make  
20 the buy, we are typically having the informants buy user  
21 amounts, and they're not typically portraying a drug  
22 trafficker. It happens, but the majority of the time it's  
23 going to be on a user level, and the reason that is, a lot of  
24 informants that we are using are either former users of  
25 narcotics or currently users of narcotics, and so that's kind

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 of the position that they're in.

2 The times where we would -- the majority of the  
3 times where we would then start purchasing more of -- more of  
4 the trafficking level, or portraying a drug dealer, we would at  
5 that point, not all the time, but typically we would have the  
6 informant introduce an undercover, and that undercover would  
7 try to purchase more narcotics to look more like they were on  
8 the distribution level.

9 Q Thank you. Now let's talk about some of your specific  
10 experience with buying these. Would it be fair to say that  
11 you've been assigned to specific identifiable units that have  
12 investigated low to mid level drug traffickers?

13 A Yes. Shortly after coming out of the academy, I was  
14 assigned to the Downriver Area Narcotics Organization. I did  
15 that for approximately two and-a-half years starting in 2002.

16 I was also on another task force that also dealt  
17 with low level to mid level narcotics traffickers called the  
18 CAT team out of Washtenaw County which was the Community Action  
19 Team. I was actually on the ground level and helped create  
20 that task force. That's still in existence today.

21 Q And the DRANO, the Downriver team you mentioned, that's  
22 one of the Michigan State Police multi-jurisdictional task  
23 forces, is that correct?

24 A That's correct.

25 Q That was from approximately 2003 to 2005?

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 A Yes, it spanned about two and-a-half years.

2 Q When you were operating in that capacity, Special Agent  
3 Nether, did you personally conduct undercover buys of  
4 controlled substances?

5 A I did.

6 Q When you were operating in that capacity, did you also  
7 oversee, as a supervisory agent, controlled purchases by  
8 confidential informants?

9 A Not as a supervisor role, but I participated as a team  
10 member that oversaw CI buys and UC buys of narcotics.

11 Q Were you involved in the debriefing of users of controlled  
12 substances?

13 A Yes.

14 Q Were you also experienced, or did you receive experience  
15 as a result of your investigations, in interviewing low to mid  
16 level narcotics traffickers either prior or post their arrest?

17 A Yes.

18 Q Also during the course of these investigations did you  
19 assist or lead, yourself as an officer in charge of a case, in  
20 search warrants related to these investigations of low to mid  
21 level dealers?

22 A Yes.

23 Q Turning your attention, then, to the CAT team you  
24 mentioned in Washtenaw County. Did you have any experience  
25 when you were in that position with undercover purchases?

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 A Yes.

2 Q What types of drugs do you recall did you purchase when  
3 you were in Washtenaw County?

4 A Crack cocaine, cocaine, heroin, ecstasy, marijuana. Those  
5 are the different types of narcotics that I would personally  
6 purchase when I was a member of that team.

7 Q Let's talk about, again, that experience with any kind of  
8 confidential informants and controlled purchases within -- did  
9 you have experience with that with the CAT team?

10 A Yes. When I was involved with the CAT team, I did obtain  
11 an undercover house, I wired up the house with video and  
12 recording equipment and moved two confidential informants into  
13 this house in the West Willow area of Ypsilanti, where the  
14 informants on a daily basis would meet with both users and  
15 dealers and record all of their interactions, and at times make  
16 purchases from them of guns and drugs.

17 Q As a result of this specific investigation, did you learn  
18 information such as the importance of prices and how much users  
19 were buying, what was an average use amount, things of that  
20 nature?

21 A Absolutely.

22 Q Let's transition then to your experience in the Enhanced  
23 Undercover Program for the ATF. Did you operate in an  
24 undercover capacity and purchase narcotics while acting in that  
25 role?

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 A Yes.

2 Q Can you outline for the Court some of your experience in  
3 the purchase of narcotics while operating under the EUP?

4 A So some of the cases that I've been involved in as a  
5 member of the EUP, Enhanced Undercover Program, I've worked in  
6 multiple storefront locations, specifically like smoke shops,  
7 running it as a business, working six to eight hours a day,  
8 where on a daily basis I would be speaking with drug users,  
9 drug dealers, gun traffickers, in different states. One was in  
10 Portland, one was in Georgia.

11 I actually operated a barber shop in the City of  
12 Detroit on the west side of the city where, again, daily, I  
13 would be speaking for hours on end with different users,  
14 dealers, gun traffickers. We would make purchases two to three  
15 times a day, sometimes more. I've also been tasked with going  
16 to California in the Stockton, California area for four months,  
17 where I did undercover, where I was part of a team of  
18 undercover agents where we made six to eight purchases of drugs  
19 and guns a day. I would specifically be responsible for  
20 probably about two buys every single day, Monday through  
21 Friday.

22 I was in a storefront that was a clothing  
23 store/tobacco shop in Louisville, Kentucky for six months where  
24 I would work Monday through Friday, again buying from,  
25 actually, in that location probably mostly low level



Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 traffickers as well as users that were trying to sell  
2 narcotics, as well. There was only a couple times where high  
3 level traffickers or mid level traffickers came to that  
4 location.

5 I've also portrayed myself as a multiple kilo  
6 dealer as, I guess, a drug mule to infiltrate drug robbery  
7 crews. I've done at least 10 different cases where I've met  
8 with robbery crews, that even times we've known these guys to  
9 kill people to steal their narcotics, and I would basically  
10 discuss with them robbing other dope dealers, drug dealers, and  
11 we would arrest those individuals when they were conspiring to  
12 rob those drug dealers.

13 I've participated as the UC on, in the City of  
14 Detroit for narcotics crews that had 10-plus members. One was  
15 called the Joy Boys Crew, called the 952 Boys where I probably  
16 arrested more than 10 individuals for selling directly hand to  
17 hand with me crack cocaine.

18 Those are just some of the bigger cases, and I've  
19 had a ton of a lot smaller cases where they're just, you know,  
20 meeting with certain individuals that aren't necessarily part  
21 of a drug crew or organization, but might be an individual  
22 selling.

23 Q Thank you. I think we've outlined a pretty sufficient  
24 basis as far as your general experience. Let me ask you some  
25 specifics.

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1           You just mentioned that in one of these positions  
2 as a member of the Enhanced Undercover Program, that you were  
3 buying mostly from either drug users or low level dealers, is  
4 that correct?

5       A     Mostly, yes.

6       Q     What did you learn as to the common purchase or use  
7 amounts by a drug user?

8       A     So typically, a drug user is going to purchase  
9 approximately -- and this isn't going to be the same every  
10 time, but approximately 0.2 grams of crack cocaine which would  
11 be considered like one rock. It could be a little bit smaller,  
12 could be a little bit bigger. That rock would be about \$20.  
13 It could be more depending on where you live, where you're  
14 purchasing from, but that's what I learned would typically be a  
15 user amount of narcotics.

16           Heroin would be around the same thing. It could  
17 be even a smaller amount.

18           And then, when it came to drug traffickers,  
19 especially when I portrayed a drug trafficker, we would  
20 typically start with purchasing maybe 3 grams of crack cocaine,  
21 7 grams of crack cocaine, up to an ounce. So typically my  
22 purchases would be somewhere between 3 grams and an ounce when  
23 I was trying to portray a drug trafficker.

24       Q     Few things that you mentioned there that I want to dig  
25 into. Let's talk about the average use amount first. When you

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 indicate that the average user was purchasing about 0.2 grams,  
2 when you have portrayed a user, did you purchase similar  
3 amounts?

4 A Yes. I haven't portrayed a user all that often. Just  
5 based on my appearance, it is a little more difficult based on  
6 what a user typically looks like that I've observed, but when I  
7 have portrayed myself as a user, I have purchased as small as  
8 one rock of crack cocaine or two rocks of crack cocaine, yes.

9 Q Based on your own experience as well as your discussions  
10 with drug users, why is it that users of crack cocaine only  
11 purchase this, maybe, two tenths of a gram amount?

12 A Well, crack cocaine is very addictive. The high from  
13 crack cocaine typically lasts 5 to 15 minutes, and the effects  
14 of that high typically make that user want to get that high  
15 again. So typical users of crack cocaine have trouble holding  
16 down jobs or any responsibility, and they usually spend all of  
17 their money on narcotics, and if they can't come up with money,  
18 they will trade whatever items they can in exchange for those  
19 narcotics. They will steal from family members to obtain those  
20 narcotics. So yeah, when it comes to a user, they're trying to  
21 get their hands on whatever they can.

22 Q You mention that when you were operating in a capacity as  
23 a low level dealer, you purchased amounts ranging from 3 grams,  
24 7 grams, to an ounce itself. When you're dealing with  
25 something like 3 grams of crack cocaine, is there even specific

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 terms or vernacular on the street that's used for that amount?

2 A Well, I would call it a ball. So which is like an eighth  
3 of an ounce, and typically an eighth of an ounce is 3.5 grams.  
4 That's when you're dealing with powder cocaine. When you're  
5 dealing with crack cocaine, it's 3 grams.

6 There's different weights for the different type  
7 of narcotic, and it's just based off of the cutting agents and  
8 what happens when you actually turn powdered cocaine into crack  
9 cocaine. So an ounce of powdered cocaine is 28.3 grams, but if  
10 you're purchasing an ounce of cocaine, it's typically about 24  
11 grams for the crack cocaine because a few grams burn off. So  
12 yeah, it would typically be about 3 grams, and the terminology  
13 would usually be a ball.

14 Q In this instance, we have approximately 7.5 grams of crack  
15 cocaine. Would there be a type of term or specific way you  
16 might request that if you were acting as either a user or a low  
17 level dealer?

18 A I mean, you would just -- I would just say a quarter, and  
19 typically if you say a quarter, they're going to think you're  
20 talking about a quarter of an ounce.

21 Q You mentioned previously that you had purchased not as  
22 often as maybe you might have purchased more weight consistent  
23 with, say, a low or mid level dealer, but you had purchased use  
24 amounts before.

25 Based on your experience as an undercover, as

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 well as supervising confidential informants, what's the typical  
2 price that someone might pay for that .2 grams, or somewhere  
3 around that amount of crack cocaine?

4 A I mean, typically, for a one use of crack cocaine you're  
5 going to pay anywhere between -- and again, it's regional. It  
6 could be based on being in the city, the suburbs, but it's  
7 going to be anywhere from 10 to \$40. I would say the average  
8 is \$20.

9 Q Fair to say you've operated here in the Detroit area?

10 A Yes.

11 Q Based on your own experience here, what would be the  
12 average price of approximately .2 grams?

13 A \$20.

14 Q I want to somewhat as a whole wrap up your experience  
15 here. Can you estimate for the Court approximately how many  
16 undercover controlled purchases you have handled yourself?

17 A Me personally, as the undercover purchasing narcotics, I  
18 would say easily a couple hundred.

19 Q All right.

20 A I mean, I had some operations where I was doing it  
21 multiple times a day for months on end. The longest I've been  
22 undercover is 11 out of 12 months away from home, so I would  
23 say a couple hundred times, easily.

24 Q When was the most recent time that you've purchased  
25 narcotics yourself?

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 A Last time I actually purchased narcotics was in 2018.

2 Q As a supervisory agent, are you still involved with the  
3 management and outlining of plans of operations by your own  
4 agents who are currently conducting these types of buys?

5 A Yes. For my team, I would be the on-scene commander. I  
6 would have to review all the operational plans, all the  
7 reports, so I have to see what the plan is, and have to approve  
8 that before we actually go out and do that operation.

9 Q In an undercover capacity, how many times, if you can  
10 estimate for the Court, please, have you sold -- fake drugs, of  
11 course, but sold in a capacity as a low to mid-level dealer?

12 A Well, they thought we were selling it, but we had to  
13 arrest them, and that probably happened 10 to 15 times where I  
14 have sold drugs and arrested the individual at the time of the  
15 sale.

16 Q And when was the most recent time that you've participated  
17 in that form of operation?

18 A That was much longer ago, and I would have to  
19 approximately -- like 2014 maybe.

20 Q Thank you. Approximately how many times have you as the  
21 agent in charge conducted a controlled purchase of narcotics by  
22 a confidential informant?

23 A That would also be a couple hundred. I mean, I had a case  
24 last year that I ran as a supervisor, where during one case I  
25 at least had an informant make 45, approximately 45 purchases

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 of narcotics from individuals. And actually, during that  
2 occasion, the informant that we were using was never a drug  
3 dealer, so I actually had to talk him through how to actually  
4 portray a drug dealer, what amounts to buy, because he just  
5 wasn't comfortable with it. But I mean, that alone was 45  
6 times just last year as a supervisor, so I would say at least a  
7 couple hundred.

8 Q These controlled purchases involving criminal informants,  
9 or confidential informants, rather, were any of them for the  
10 purchase of crack cocaine?

11 A Yes, absolutely.

12 Q Have you ever been involved in the exchange of firearms  
13 for drugs?

14 A I have.

15 Q And you yourself, when operating in an undercover  
16 capacity, have you ever had to deal with people involved with  
17 narcotics trafficking who also were doing this in conjunction  
18 with possessing a firearm?

19 A Most of the time, the individuals that I was purchasing  
20 off of did possess firearms, not necessarily that I could  
21 always see on their person, because sometimes those guns would  
22 be hidden, but typically by the end of the investigation we  
23 usually end it with a search warrant or a buy bust, and that's  
24 when we would find firearms.

25 ATF does not like to get involved in

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 investigations that are not related to guns, but most of the  
2 time the guys we're dealing with, they typically have firearms  
3 when they're selling narcotics.

4 Q Thank you. You mentioned that during the course of your  
5 career you've dealt with, I believe you said hundreds of  
6 controlled substance users, is that correct?

7 A Yes.

8 Q Based on your personal experience interviewing users of  
9 crack cocaine, debriefing confidential informants involving  
10 crack cocaine buys, is it common for them to be in possession  
11 of large amounts of currency?

12 A No.

13 Q What's your understanding as to why not?

14 A It's, you know, based on my earlier testimony, as soon as  
15 they get money, they're spending it on more drugs, because like  
16 I said, crack cocaine, for instance, the high does not last  
17 that long, but the effects of it make you want to get that high  
18 again, so you're spending all of your money. So every time  
19 I've come in possession of users, whether it's typically  
20 interviewing them at search warrants or just speaking with them  
21 while I was in an undercover capacity at different store fronts  
22 and stuff like that, I mean, these are people that don't have  
23 money to buy a pack of cigarettes in the stores that I've been  
24 in, where sometimes I'm giving it to them for free because they  
25 just have nothing.



Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 I've ran into users that just to get narcotics  
2 have actually had their teeth pulled. I remember specifically  
3 a female that had her entire top row of teeth pulled just so  
4 she could go get a prescription for pills so she could go out  
5 and use them and sell them. So these are people that literally  
6 have nothing in most cases.

7 Now, I'm sure there's exceptions to that rule,  
8 but every single person that I've run into, it's typically the  
9 same.

10 Q When interacting with folks who have a struggle with the  
11 use of crack cocaine, have you found it common that they're in  
12 the possession of some form of use paraphernalia?

13 A Yes. Even running into a user that does not have  
14 narcotics on their person, they typically always have either a  
15 crack pipe, if crack is their drug of choice, they'll have a  
16 needle if heroin is their drug of choice, again, a char boy if  
17 crack is their drug of choice.

18 So typically, they're always going to have the  
19 paraphernalia associated with the drugs they're doing. They're  
20 typically not going to leave the house, just like you wouldn't  
21 leave the house without your wallet.

22 Q Want to transition now to the other drug involved in this  
23 case, which is powdered cocaine. You've reviewed the materials  
24 associated with this, is that fair?

25 THE COURT: Mr. Smith, how long do you anticipate

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 this is going to go?

2 MR. SMITH: I would say my questioning, Your  
3 Honor, would be maybe another 10 to 15 minutes. And I beg  
4 the Court's pardon, I thought Ms. Mannarino's request was  
5 for just this, to establish his experience and training  
6 and be able to portray to the Court his expertise.

7 THE COURT: I've got another matter at 11:30. I  
8 can push that off to 12:00, but we've got to be done here  
9 by 12:00.

10 MR. SMITH: I will finish quickly, Your Honor.

11 MS. MANNARINO: Judge, I'm prepared to make a  
12 motion at this point that I appreciate the agent's  
13 experience, but this doesn't have anything to do with this  
14 case, and this is not anything that is not within the  
15 purview of the jury to decide. So, you know, bringing in  
16 an expert under these circumstances to tell the jury  
17 something that is within their purview to know and  
18 understand, I think is inappropriate. You know, this is  
19 not an area for expert testimony. The jury knows and  
20 understands.

21 THE COURT: Why don't you just make a proffer,  
22 Mr. Smith, of what the testimony would be, and then we'll  
23 have Ms. Mannarino make her motion.

24 MR. SMITH: Certainly, Your Honor.

25 THE COURT: We've still got the 404(b) one to

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 discuss, as well.

2 MR. SMITH: Absolutely, Judge. Would you like to  
3 excuse the witness now?

4 THE COURT: Yes. You may be excused.

5 THE WITNESS: Okay. Thank you.

6 (Witness excused 10:56 a.m.)

7 MR. SMITH: May I proceed?

8 THE COURT: You may.

9 MR. SMITH: Your Honor, as the testimony would  
10 proceed, the government proffers that Special Agent Nether  
11 would continue to outline for the Court that, where I was  
12 going to specifically there, the powder cocaine itself,  
13 one and-a-half grams, could arguably be for use amounts.  
14 However, we were then going to transition into the  
15 collective here, which is the one and-a-half grams of  
16 powdered cocaine, the seven and-a-half grams of crack  
17 cocaine, the fact that it was individually packaged, that  
18 it was concealed in conjunction with a firearm, that those  
19 items were concealed specifically in Mr. Roberson's groin  
20 area, and that, also, Mr. Roberson had over a thousand  
21 dollars of U.S. currency on him. Approximately \$600 of  
22 that was in \$20 bills.

23 Special Agent Nether was then going to outline  
24 that for the Court, and the reason why that's important,  
25 Judge, is because the average juror, as the Sixth Circuit

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 indicates, and contrary to what Ms. Mannarino says, does  
2 not have this knowledge or experience. It's outside of  
3 the ken of the average juror; narcotics trafficking.  
4 That's why the Sixth Circuit specifically has indicated  
5 that drug trafficking experts are the type of expert that  
6 has been overwhelmingly used in cases like this, and it's  
7 because the average juror does not know about, two tenths  
8 of a gram are use amounts for crack cocaine versus seven  
9 and-a-half grams here that's one large chunk, that's  
10 consistent with low to mid-level dealing.

11 So that is where Special Agent Nether's testimony  
12 would go, Your Honor.

13 THE COURT: Okay. Thank you very much.

14 Ms. Mannarino.

15 MS. MANNARINO: Again, I understand what the  
16 prosecution is trying to do. What they're trying to do  
17 is, you know, convince a jury that this is something other  
18 than what it is, and I think the case law, and I'm not  
19 going to go through it, it's all in my motion, I trust the  
20 Court has read it, I think the case law supports the fact  
21 that this is exactly the type of information that is --  
22 let me find -- where any probative value is substantially  
23 outweighed by the danger of unfair prejudice and will lead  
24 the jury to speculate and thus mislead the trier of fact.  
25 Testimony as to such matters is not beyond the ken of the

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 jury and thus are not appropriate subject of expert  
2 testimony.

3 THE COURT: Mr. Smith.

4 MR. SMITH: Thank you, Your Honor.

5 Your Honor, I would just outline briefly for the  
6 Court the analysis under 702; specifically, when you're  
7 talking about specialized knowledge such as what Special  
8 Agent Nether has.

9 First, is the expert qualified? I don't think  
10 there's anything in dispute here about his qualifications.  
11 Second is whether the proposed testimony is relevant. And  
12 third is whether the proposed testimony is reliable. The  
13 Sixth Circuit has indicated both -- a yes to both of those  
14 questions.

15 Counsel mentions the case law. I would note that  
16 in counsel's brief, she relies on two cases from the  
17 Second Circuit, one case from the Eighth Circuit. All  
18 three of them are 1991 or earlier, whereas the case that  
19 the government relies on is Sixth Circuit case law from  
20 the 2000s and the 1990s.

21 Judge, this is the type of case that an expert is  
22 absolutely necessary. That's why this circuit has held  
23 that it's overwhelmingly admitted, because someone like  
24 Special Agent Nether is able to tell 12 average members  
25 from our community why 7.5 grams is more consistent with a

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 low to mid-level dealer, as to someone who has a crack  
2 cocaine use habit, why two stimulants packaged together is  
3 different than maybe one hit of the drug by an average  
4 user.

5 This isn't something that is going to mislead a  
6 jury. This testimony is actually going to illuminate all  
7 of the details and the issues for the jury. That's why  
8 the Sixth Circuit has found this to be reliable and  
9 relevant.

10 Thank you, Your Honor.

11 THE COURT: Ms. Mannarino.

12 MS. MANNARINO: In his experience, working in  
13 certain areas, doing certain things, he is -- he's not  
14 familiar with any users who are not desperate enough to  
15 have their teeth pulled. I mean, that type of testimony  
16 is outrageous for the jury. He has no familiarity with  
17 any of the studies. I understand and I appreciate his  
18 experience on the streets of the City of Detroit, and who  
19 he has encountered and why he and how he has encountered  
20 them. That's who he is going after for his confidential  
21 informants, he's going after desperate people.

22 He doesn't have any experience and contact with  
23 the over 50 percent of the users who are full-time  
24 employees and work. He doesn't have that kind of  
25 experience. His experience is all with, you know, people

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 he -- he couldn't even pass as a drug user because he  
2 looks too good. He doesn't have any experience with, like  
3 I said, the over 50 percent of drug users who are  
4 full-time employed people.

5 THE COURT: This is a slightly different argument  
6 than the one you make in your brief. The one you make in  
7 your brief is that this area is an area that the jury can  
8 access based on their own experience, not that Agent  
9 Nether's experience and testimony is outside the factual  
10 purview of this case.

11 I'm going to take this under advisement and get  
12 something back to you next week.

13 MS. MANNARINO: Thank you, Judge.

14 THE COURT: Thank you.

15 And the 404(b)?

16 MS. MANNARINO: I will rely on my motion and  
17 brief.

18 THE COURT: Okay. Mr. Smith, do you want to say  
19 anything?

20 MR. SMITH: Your Honor, I think the only thing I  
21 would outline is, again, the analysis sufficiently  
22 occurred without any doubt. Mr. Roberson pled guilty to  
23 these prior offenses. Is it for a proper purpose? Yes  
24 the intent.

25 I think what I would outline for the Court is,

Joseph Nether - Direct Examination  
Thursday, June 30, 2022

1 again, Ms. Mannarino relied heavily on a Seventh Circuit  
2 case where it talked about intent was not at issue in that  
3 case and therefore it should not be admissible evidence.  
4 But I'd like to highlight, in that case the defendant  
5 declined any knowledge or possession of those drugs  
6 entirely, and that specifically outlined that if the  
7 defendant had said, well, they are mine, I just intended  
8 to use them versus sell them, then intent would absolutely  
9 be at issue, and that's exactly what we have here is that  
10 intent is at issue because Mr. Roberson is arguing that  
11 it's for personal use, and, of course, the government is  
12 arguing that it's an intent to sell, Your Honor.

13 Thank you.

14 THE COURT: Okay. As with the first one, I'll  
15 take it under advisement. I'll get something out to you  
16 next week at the same time I rule on the exclusion of  
17 expert testimony, the Daubert motion.

18 Thank you, counsel.

19 MR. SMITH: Thank you.

20 MS. MANNARINO: Thank you.

21 (Proceedings concluded 11:04 a.m.)  
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**C E R T I F I C A T I O N**

I, Suzanne Jacques, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date set forth.

s/Suzanne Jacques  
Suzanne Jacques, RPR, RMR, CRR, FCRR  
Official Court Reporter  
Eastern District of Michigan

9/27/2022  
Date